

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:SWD:LV:GL-800480-00

WSHarris

date: **FEB 28 2002**

to: Chief, Advisory Section (SPf), Southwest District  
Attn: Tom Tracy

from: Acting Associate District Counsel, Southwest District, Las Vegas

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subject: **Request for Advisory Opinion**  
**Community Property Notices of Levy**

You would like to know whether RRA 98 and IRC § 7602(C) have changed the advice we previously provided to you regarding notice requirements for a nonliable spouse. You have raised this concern because in community property states, such as Arizona, New Mexico and Nevada, the Service may levy upon the wages of a nonliable spouse based upon the premarital or postmarital separate tax liability of the liable spouse.

We will be requesting clarification of the Service's position from the National Office. However, until such time that advice is rendered, we are bound by a prior National Office opinion which requires post-levy notice with regard to tangible personal property and both pre-levy and post-levy notice with regard to intangible property.

DISCUSSION

Your question touches the heart of a confusing community property issue. In community property states, the assessment of tax must be distinguished from assets subject to collection upon the assessment. Thus, while only one spouse may be liable for a tax, such spouse may hold an interest in community assets, including wages earned by the nonliable spouse, sufficient to allow the tax lien to attach. As a result, where the liable spouse has incurred a postmarital separate tax debt (characterized as a "community debt" in Arizona), the Service may seize wages, or assets traceable to wages, of the nonliable spouse.

This creates the situation, referred to in your memorandum, where it "feels right" to provide notice to the nonliable spouse. However, the above analysis makes it clear that only the liable spouse falls within the parameters of I.R.C. § 6331. When the nonliable spouse's wages are levied, it is actually the liable spouse's interest in such wages which is being seized. The nonliable spouse does reach the

status of a "person liable to pay tax", and therefore, does not have a statutory right to notice. Nothing in RRA 98 changes this analysis.

However, in a written opinion on point, National Office determined that a duplicate copy of notice of levy or seizure should be provided to the nonliable spouse subsequent to levying upon the liable spouse. This is a policy determination which is based on due process concerns relating to subsequent litigation. Additionally, where intangible property, such as a bank account, is seized, but will not be sold, a copy of the notice of levy should be sent simultaneously with the notice issued to the taxpayer.

In light of RRA 98, when the nonliable spouse is provided notice pursuant to the above requirements, newly enacted IRC § 7602(c) is applicable. The nonliable spouse should be treated as a "third party" and the applicable record keeping requirements must be followed.

We will request that National Office revisit their memo in light of subsequent changes in law and policy, including RRA 98, and third party notice concerns. Should National Office revise its position, we will notify you in writing. Until such time, please follow the procedures set out in this memorandum. If you need additional information or have questions, please do not hesitate to contact me at ext. 1127. In the meanwhile, we are closing our file on your advisory request, subject to reopening after we hear from National Office.

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WENDY HARRIS  
Attorney

cc: District Counsel, Southwest District  
Regional Counsel, CC:WR:GL